

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Donald Enschede, in individual and
representative capacity as trustee of
the Enschede Brothers 1985 Trust
Created 6/8/1985;
Tri Star Foods, LLC, a Delaware
Limited Liability Company; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Donald Enschede, in individual and
representative capacity as trustee of the Enschede Brothers 1985 Trust Created
6/8/1985; Tri Star Foods, LLC, a Delaware Limited Liability Company; and
Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual
2 dexterity impairments. He uses a wheelchair for mobility and has a specially
3 equipped van.

4 2. Defendant Donald Enschede, in individual and representative capacity as
5 trustee of the Enschede Brothers 1985 Trust Created 6/8/1985, owned the real
6 property located at or about 16995 Condit Rd., Morgan Hill, California, in
7 November 2018.

8 3. Defendant Donald Enschede, in individual and representative capacity as
9 trustee of the Enschede Brothers 1985 Trust Created 6/8/1985, owned the real
10 property located at or about 16995 Condit Rd., Morgan Hill, California, in
11 January 2019.

12 4. Defendant Donald Enschede, in individual and representative capacity as
13 trustee of the Enschede Brothers 1985 Trust Created 6/8/1985, owned the real
14 property located at or about 16995 Condit Rd., Morgan Hill, California, in
15 March 2019.

16 5. Defendant Donald Enschede, in individual and representative capacity as
17 trustee of the Enschede Brothers 1985 Trust Created 6/8/1985, owns the real
18 property located at or about 16995 Condit Rd., Morgan Hill, California,
19 currently.

20 6. Defendant Tri Star Foods, LLC owned Carl's located at or about 16995
21 Condit Rd., Morgan Hill, California, in November 2018.

22 7. Defendant Tri Star Foods, LLC owned Carl's located at or about 16995
23 Condit Rd., Morgan Hill, California, in January 2019.

24 8. Defendant Tri Star Foods, LLC owned Carl's located at or about 16995
25 Condit Rd., Morgan Hill, California, in March 2019.

26 9. Defendant Tri Star Foods, LLC owns Carl's ("Restaurant") located at or
27 about 16995 Condit Rd., Morgan Hill, California, currently.

28 10. Plaintiff does not know the true names of Defendants, their business

1 capacities, their ownership connection to the property and business, or their
2 relative responsibilities in causing the access violations herein complained of,
3 and alleges a joint venture and common enterprise by all such Defendants.
4 Plaintiff is informed and believes that each of the Defendants herein,
5 including Does 1 through 10, inclusive, is responsible in some capacity for the
6 events herein alleged, or is a necessary party for obtaining appropriate relief.
7 Plaintiff will seek leave to amend when the true names, capacities,
8 connections, and responsibilities of the Defendants and Does 1 through 10,
9 inclusive, are ascertained.

10
11 **JURISDICTION & VENUE:**

12 11. The Court has subject matter jurisdiction over the action pursuant to 28
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15 12. Pursuant to supplemental jurisdiction, an attendant and related cause
16 of action, arising from the same nucleus of operative facts and arising out of
17 the same transactions, is also brought under California's Unruh Civil Rights
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19 13. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
20 founded on the fact that the real property which is the subject of this action is
21 located in this district and that Plaintiff's cause of action arose in this district.

22
23 **FACTUAL ALLEGATIONS:**

24 14. Plaintiff went to the Restaurant in November 2018, January 2019
25 (twice) and March 2019 with the intention to avail himself of its goods,
26 motivated in part to determine if the defendants comply with the disability
27 access laws.

28 15. The Restaurant is a facility open to the public, a place of public

1 accommodation, and a business establishment.

2 16. Parking spaces are one of the facilities, privileges, and advantages
3 offered by Defendants to patrons of the Restaurant.

4 17. Unfortunately, on the dates of the plaintiff's visits, the defendants did
5 not provide van-accessible parking in conformance with the ADA Standards.¹

6 18. Currently, the defendants do not provide accessible parking in
7 conformance with the ADA Standards.

8 19. Plaintiff personally encountered this barrier.

9 20. By failing to provide accessible parking, the defendants denied the
10 plaintiff full and equal access.

11 21. The lack of accessible parking created difficulty and discomfort for the
12 Plaintiff.

13 22. Restrooms are another one of the facilities, privileges, and advantages
14 offered by Defendants to patrons of the Restaurant.

15 23. Even though the plaintiff did not confront the barrier, the defendants do
16 not provide an accessible restroom in conformance with the ADA Standards.²

17 24. The defendants have failed to maintain in working and useable
18 conditions those features required to provide ready access to persons with
19 disabilities.

20 25. The barriers identified above are easily removed without much
21 difficulty or expense. They are the types of barriers identified by the
22 Department of Justice as presumably readily achievable to remove and, in fact,

24 ¹ For example, the parking stalls reserved for persons with disabilities were about 96 inches in width while
25 the shared access aisle that accompanied the parking stalls was only about 60 inches in width. These are not
26 van accessible. Additionally, the parking stalls and access aisle were not level with each other because there
27 was a built up curb ramp running into the access aisle. On information and belief there are other issues with
28 the parking that renders it non-compliant. Those issues will be fleshed out in discovery and inspections. The
29 plaintiff seeks to have fully compliant parking provided.

² For example, the pipe under the restroom sink is not wrapped to protect against burning contact. On
information and belief there are other issues with the restroom that renders it non-compliant. Those issues
will be fleshed out in discovery and inspections. The plaintiff seeks to have a fully compliant restroom
provided.

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 26. Plaintiff will return to the Restaurant to avail himself of its goods and to
5 determine compliance with the disability access laws once it is represented to
6 him that the Restaurant and its facilities are accessible. Plaintiff is currently
7 deterred from doing so because of his knowledge of the existing barriers and
8 his uncertainty about the existence of yet other barriers on the site. If the
9 barriers are not removed, the plaintiff will face unlawful and discriminatory
10 barriers again.

11 27. Given the obvious and blatant nature of the barriers and violations
12 alleged herein, the plaintiff alleges, on information and belief, that there are
13 other violations and barriers on the site that relate to his disability. Plaintiff will
14 amend the complaint, to provide proper notice regarding the scope of this
15 lawsuit, once he conducts a site inspection. However, please be on notice that
16 the plaintiff seeks to have all barriers related to his disability remedied. See
17 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
18 encounters one barrier at a site, he can sue to have all barriers that relate to his
19 disability removed regardless of whether he personally encountered them).
20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
22 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 28. Plaintiff re-pleads and incorporates by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.

27 29. Under the ADA, it is an act of discrimination to fail to ensure that the
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
3 § 12182(a). Discrimination is defined, inter alia, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
5 or procedures, when such modifications are necessary to afford
6 goods, services, facilities, privileges, advantages, or
7 accommodations to individuals with disabilities, unless the
8 accommodation would work a fundamental alteration of those
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
12 defined by reference to the ADA Standards.
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 30. When a business provides parking for its customers, it must provide
22 accessible parking in compliance with the ADA Standards.

23 31. Here, the lack of parking in compliance with the ADA Standards is a
24 violation of the law.

25 32. When a business provides facilities such as a restroom, it must provide
26 an accessible restroom in compliance with the ADA Standards.

27 33. Here, no such accessible restroom has been provided.

28 34. The Safe Harbor provisions of the 2010 Standards are not applicable

1 here because the conditions challenged in this lawsuit do not comply with the
2 1991 Standards.

3 35. A public accommodation must maintain in operable working condition
4 those features of its facilities and equipment that are required to be readily
5 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

6 36. Here, the failure to ensure that the accessible facilities were available
7 and ready to be used by the plaintiff is a violation of the law.

8
9 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
10 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
11 Code § 51-53.)

12 37. Plaintiff repleads and incorporates by reference, as if fully set forth
13 again herein, the allegations contained in all prior paragraphs of this
14 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
15 that persons with disabilities are entitled to full and equal accommodations,
16 advantages, facilities, privileges, or services in all business establishment of
17 every kind whatsoever within the jurisdiction of the State of California. Cal.
18 Civ. Code § 51(b).

19 38. The Unruh Act provides that a violation of the ADA is a violation of the
20 Unruh Act. Cal. Civ. Code, § 51(f).

21 39. Defendants’ acts and omissions, as herein alleged, have violated the
22 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
23 rights to full and equal use of the accommodations, advantages, facilities,
24 privileges, or services offered.

25 40. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
26 discomfort or embarrassment for the plaintiff, the defendants are also each
27 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
28 (c).)

1 41. Although the plaintiff was markedly frustrated by facing discriminatory
2 barriers, even manifesting itself with minor and fleeting physical symptoms,
3 the plaintiff does not value this very modest physical personal injury greater
4 than the amount of the statutory damages.

5
6 **PRAYER:**

7 Wherefore, Plaintiff prays that this Court award damages and provide
8 relief as follows:

9 1. For injunctive relief, compelling Defendants to comply with the
10 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
11 plaintiff is not invoking section 55 of the California Civil Code and is not
12 seeking injunctive relief under the Disabled Persons Act at all.

13 2. Damages under the Unruh Civil Rights Act, which provides for actual
14 damages and a statutory minimum of \$4,000 for each offense.

15 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
16 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

17 Dated: May 23, 2019

CENTER FOR DISABILITY ACCESS

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19 By: 
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21 Amanda Seabock, Esq.
22 Attorney for plaintiff
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